

**REMARKS/ARGUMENTS**

Claims 28, 31 and 34 have been amended. Claims 28-34 are pending in the application.

Claims 28-34 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kidder (U.S. Patent 6,363,413) in view of Watanabe (U.S. Patent 6,430,354) and Boykin (U.S. Pub. No. 2001/0042048).

Amended independent claim 28, in relevant part, recites:

a network interface for receiving an upgrade request from a user for content data previously downloaded by the user from the content server as base data of a first format selected by the user from a plurality of predetermined base data formats; wherein the upgrade request specifies a target format of a higher quality than the first format and the target format is from at least one predetermined upgrade data format determined to have an upgradable relationship with the first format selected

(Emphasis added). Accordingly, a content server for distributing upgraded content data of claim 1 may receive an upgrade request from a user for content data previously downloaded by the user from the content server as base data of a first format selected from a plurality of predetermined base data formats. Claim 1 further requires that a target format, which is specified in the upgrade request, has a higher quality than the first format, and is "from at least one predetermined format determined to have an upgradable relationship with the first format selected." (Emphasis added; see specification, for example, pg. 34, ln. 20-pg. 35, ln. 4 and FIG. 8). Consequently, the user is allowed to select a format (target format) of upgrading data to be downloaded from one or more upgrade data formats determined to have an upgradable relationship with a first format (base data format) selected by the user for previously

downloading base data. (See specification, for example, pg. 27, ln. 24-pg. 28, ln. 8).

The applied portions of Kidder, Watanabe and Boykin do not appear to disclose the above-described features that the upgrade request specifies a target format from at least one predetermined format "determined to have an upgradable relationship with the first format selected," as now specifically recited in independent 28.

Accordingly, for at least this reason, independent claim 28 is distinguishable over the applied combination of Kidder, Watanabe and Boykin.

In addition, amended independent claims 31 and 34, which include limitations corresponding to those of claim 28 described above, also are distinguishable over Kidder, Watanabe and Boykin as applied by the Examiner for at least the same reasons.

Further, dependent claims 29, 30, 32, and 33, which depend from one of independent claims 28 and 31, are patentable over the applied combination of Kidder, Watanabe and Boykin for at least the same reasons as discussed in connection with the independent claims, and because of the additional restrictions they require.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-

5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: February 7, 2011

Respectfully submitted,

Electronic signature:

/Davy E. Zoneraich/

Davy E. Zoneraich

Registration No.: 37,267

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicant

1330975\_1.doc